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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 363

JOHN DONALD WALKER, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion in the Court of Appeals (R. 66-70) is reported at 197 F. 2d 287.

JURISDICTION

The judgment of the Court of Appeals was entered on June 2, 1952 (R. 71). On September 1,

1952, Mr. Justice Jackson extended the time for filing a petition for a writ of certiorari to and including September 27, 1952 (R. 72), and the petition was filed on that date. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a sentence previously sustained on appeal may be attacked by motion under 28 U.S.C. 2255 on the ground that there was admitted in evidence at the trial a confession obtained after an arrest based upon an insufficient complaint.

STATUTES AND RULE INVOLVED

Section 3 of the National Stolen Property Act, 48 Stat. 794, as amended by the Act of August 3, 1939, 53 Stat. 1178, 18 U.S.C. (1946 ed.) 415, provided, in pertinent part, as follows:

> Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, * * * shall be punished by a fine of not more than $10,000 or

by imprisonment for not more than ten years, or both * * *.[1]

Section 2255 of the Judicial Code, 28 U.S.C. 2255, provides as follows:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> A motion for such relief may be made at any time.
>
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or in-

[1] This section is now incorporated with minor changes in 18 U.S.C. 2314.

> fringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

* * * * * * *

Rule 3 of the Federal Rules of Criminal Procedure provides:

> The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.

STATEMENT

Petitioner was convicted of having transported, from Houston, Texas, to New York City, sums of money "taken feloniously by fraud or with intent to steal or purloin." 18 U.S.C. (1946 ed.) 415 (now 18 U.S.C. 2314). *United States* v. *Walker*, 190 F. 2d 481 (C.A. 2), certiorari denied, 342 U.S. 868, rehearing denied, 342 U.S. 899. An earlier conviction had been reversed and a new trial ordered because of an error in the admission of evidence. *United States* v. *Walker*, 176 F. 2d 564 (C.A. 2), certiorari denied, 338 U.S. 891.

After the denial by this Court of his petition for certiorari to review the affirmance of his conviction

on retrial, petitioner filed an application for relief under Section 2255 of the Judicial Code. He there advanced for the first time the contention that his conviction was invalid because it was based on the admission in evidence at the trial of (1) statements obtained during a period when he was allegedly under illegal arrest, and (2) testimony obtained and facts discovered by search of his trunks, to which he apparently consented, during this same period (R. 5, 8, 9).

The circumstances of the alleged illegal arrest were these. In August 1947, a complaint against petitioner was filed before a United States Commissioner for the Eastern District of Kentucky, reading in relevant part, as follows (R. 19-20):

> Before Joseph J. Bradley, Lexington, Kentucky, Name of Commissioner
>
> The undersigned complainant being duly sworn states:
>
> That on or about between May 1, 1946 and Dec. 20, 1946, at Lexington, Ky., in the Eastern District of Kentucky, John Donald Walker did unlawfully, knowingly and * * * wilfully transport in interstate commerce money and stocks of the approximate value of $18,000.00, which had theretofore been taken by him through fraud, knowing the same to have been so taken.
>
> And the complaint further states that he believes that John W. Core, Sp. Agt. FBI,

Louisville, Ky. is material witness in relation to this charge.

JOHN W. CORE
Signature of Complainant.
Sp. Agt. FBI
Official Title

A warrant for petitioner's arrest was issued (R. 11) and on August 29, 1947, he was arrested in Cumberland, Maryland (R. 13).[2] On September 10, 1947, with the consent of petitioner (R. 17-18), he was ordered removed to the Eastern District of Kentucky (R. 14-17).

The complaint, pursuant to which petitioner was arrested, related to certain transactions between petitioner and his second "wife", Sally Grehan (R. 29). On October 20, 1947, petitioner was indicted in connection with these transactions (R. 5), but on June 14, 1948, the United States Attorney for the Eastern District of Kentucky concluded that he would be unable to prove a case under this indictment, and dismissed it (R. 5).

However, while petitioner was in custody pursuant to the Kentucky complaint and warrant, he made certain statements which resulted in the later indictment and conviction in New York which is the subject of the present collateral attack. Spe-

[2] The warrant of arrest pursuant to which petitioner was actually taken seems to have been issued pursuant to the complaint filed in Maryland by one Jones, another agent of the FBI, whose basis for action must have been the Kentucky complaint and warrant (see R. 12-14).

cifically, he confessed his guilt of having transported across state lines money fraudulently obtained from Mary Ashe, another of his "wives" (R. 9). And he consented to a search of certain pieces of his luggage then in the possession of Mary Ashe (who also consented to their search). As a result of this search, the existence of Clara Duerr Walker, in fact petitioner's wife, was discovered for the first time (R. 5).

Alleging that without the admission of this evidence he would not have been convicted,[3] petitioner filed the present petition for vacation of the judgment of conviction (R. 10). He excused his failure to raise this objection earlier by stating that he was unable earlier to get the complaint pursuant to which the warrant of arrest was issued. He supported this assertion by papers showing efforts by letter, beginning only after the affirmance of his conviction by the Court of Appeals in 1951, and by mere statements that he had endeavored unsuccessfully to secure a copy of the complaint from the clerk of the District Court for the Eastern District of Kentucky "prior to December 31, 1949" (R. 36).

The District Court denied the motion (R. 52) and on reargument adhered to its views (R. 60). The Court of Appeals affirmed (R. 71), holding

[3] Petitioner argued that the disclosure of Clara Duerr Walker's existence caused Mary Ashe, the principal witness for the Government, to change from a friendly to a hostile attitude toward petitioner (See R. 8 and Pet. Pet. 17).

that even if a conviction could be collaterally attacked on the grounds asserted, petitioner had presented no grounds for relief since he had been legally arrested.

ARGUMENT

Petitioner argues that his arrest was illegal because based upon an insufficient complaint; that statements made during the period of illegal arrest were inadmissible in evidence; and that such error in the admission of evidence supports a collateral attack on the judgment of conviction, at least where there was a good reason, such as he alleged, for failing earlier to raise the objection. This argument is fallacious at every point.

1. The complaint was sufficient under Rule 3 of the Federal Rules of Criminal Procedure which requires that a complaint state "the essential facts constituting the offense charged," and that it be made under oath before a commissioner. The offense charged against petitioner was under 18 U.S.C. (1946 ed.) 415, the transmission across state lines of sums in excess of $5,000 knowingly obtained by fraud. Precisely those facts were charged against petitioner. While more details might have been alleged, even an indictment so stated in terms of the statute would be sufficient. *Carter* v. *United States,* 173 F. 2d 684 (C.A. 10), certiorari denied, 337 U.S. 946.

Moreover, a complaint is valid if, on its face, it purports to be based on the personal knowledge of

the complainant. Cf. *Rice* v. *Ames,* 180 U.S. 371, 376. This does not mean that a complaint cannot be challenged on a showing that there was not or could not have been such personal knowledge. But it does mean that a complaint valid on its face will not be later treated as void on the basis of a showing that could have been, but was not, promptly made.[4]

2. Even if the arrest were illegal, it would not follow that the evidence, obtained while petitioner was in custody, was incompetent.

Petitioner does not contend that his confession was involuntary. He relies on the rule of *McNabb* v. *United States,* 318 U.S. 332, holding inadmissible in evidence a confession obtained during a period of illegal detention arising from the failure of law enforcement officers to comply with the statutes requiring prompt arraignment. It is delay in arraignment and not illegality of arrest which underlies the *McNabb* rule. Here the complaint and warrant were not void, but at most voidable. The illegality, if any, of this kind of detention is not at all related to a purposive holding of a defendant as in the *McNabb* case,[5] and the rule

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[4] The cases on which petitioner relies are, for the most part, cases in which prompt challenge was made. See, e.g., *United States* v. *Rurowde,* 220 Fed. 210 (S.D. N.Y.); *United States* v. *Gokey,* 32 F. 2d 793 (N.D. N.Y.).

[5] The legality of the search of the luggage does not depend on the legality of the arrest. The search was consented to both by petitioner and by Mary Ashe, who had possession of it. See 190 F. 2d at 483 and R. 5, 8, 9.

of exclusion laid down in the *McNabb* case does not apply.

3. Moreover, petitioner has been through two trials of this case, in both of which he objected to the admissibility of the evidence, without raising the particular challenge he now makes. See 176 F. 2d at 566 and 190 F. 2d at 483. Although he attempts to excuse his failure on the ground that he was unable to get the complaint from the clerk of the Kentucky district, he is singularly vague in stating any efforts to do so prior to December 1949 over two years after his arrest. An objection to the admissibility of evidence even on constitutional grounds does not support a collateral attack by habeas corpus or by motion under 28 U.S.C. 2255. *Smith* v. *United States*, 187 F. 2d 192, 197 (C.A. D.C.), certiorari denied, 341 U.S. 927; *Birtch* v. *United States*, 173 F. 2d 316, 317 (C.A. 4), certiorari denied, 337 U.S. 944; *Burall* v. *Johnson*, 134 F. 2d 614 (C.A. 9), certiorari denied, 319 U.S. 768; *Price* v. *Johnston*, 125 F. 2d 806, 809 (C.A. 9), certiorari denied, 316 U.S. 677. Petitioner has shown no circumstances which would render this general rule inapplicable in this case.

Since, therefore, the motion to vacate stated no facts on which relief could be predicated, it was properly denied without a hearing.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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